

Before the  
**COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of	)	
	)	
The 4.9 GHz Band Transferred from	)	WT Docket No. 00-32
Federal Government Use	)	
	)	
	)	

## **REPLY COMMENTS OF THE UNITED TELECOM COUNCIL**

The United Telecom Council (“UTC”) hereby submits its Reply Comments on the *Further Notice of Proposed Rule Making* in the above-captioned proceeding.<sup>1</sup> UTC echoes the comments supporting eligibility for public safety radio services, and advocating licensing rules that encourage critical infrastructure entities to use the band.

**I. Public safety radio services entities should be eligible to hold licenses in the 4.9 GHz public safety band.**

There is widespread support among the comments in this proceeding for the Commission to use the broader description of “public safety radio services” (“PSRS”) contained in Section 309(j)(2) of the Act to define eligibility to use the band. UTC’s comments supporting eligibility for PSRS, including critical infrastructure (CI) entities are echoed by Cinergy/Consumers Energy and the

<sup>1</sup> The 4.9 GHz Band Transferred from Federal Government Use, WT Docket No. 00-32, *Second Report and Order and Further Notice of Proposed Rule Making*, 17 FCC Rcd 3995 (2002) (“Further Notice of Proposed Rule Making”).

Association of American Railroads, among others.<sup>2</sup> CI entities are similarly situated in their communications needs with the narrower class of Public Safety Services as defined by Section 337(f).<sup>3</sup> Both CI and traditional public safety entities need reliable communications in order to protect the safety of life, health and property, and both are often first responders in emergency situations.<sup>4</sup> Congress recognized this and intended that the definition of “public safety” within section 309(j)(2) encompass CI entities, including “utilities, railroads, metropolitan transit systems, pipelines, private ambulances and volunteer fire departments.”<sup>5</sup>

There are also important public policy reasons for making PSRS entities eligible for frequencies in the 4.9 GHz band. It would promote interoperability between CI and traditional public safety users during emergencies. Traditional public safety entities commenting in the proceeding generally agree that CI entities should be allowed to use the 4.9 GHz band in order to facilitate interoperability, even though they differ as to the way in which CI entities should be licensed.<sup>6</sup> Most recognize that critical infrastructure entities such as utilities

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<sup>2</sup> See Joint Comments of Cinergy Corporation and Consumers Energy Company, WT Docket No. 00-32, filed Jul. 8, 2002 (“Comments of Cinergy/Consumers Energy”); Comments of the Association of American Railroads, WT Docket No. 00-32, filed Jul 8, 2002 (“Comments of AAR”).

<sup>3</sup> Comments of Cinergy/Consumers Energy at 5-16.

<sup>4</sup> Comments of AAR at 3.

<sup>5</sup> House Conf. Rep. No. 105-217, 105<sup>th</sup> Cong., 1<sup>st</sup> Sess., at 572 (1997), *reprinted in* 1997 U.S.C.C.A.N. 176, 192.

<sup>6</sup> Comments of APCO, WT Docket No. 00-32, at 5 (filed Jul. 8, 2002); Comments of Public Safety Wireless Network, WT Docket No. 00-32, at 6 (filed Jul. 8, 2002)(“Comments of PSWN”); Comments of the National Public Safety Telecommunications Council, WT Docket No. 00-32, at 2-3 (filed Jul. 8, 2002).

play key roles in emergencies and that they should be allowed to share the spectrum with Public Safety on a conditional basis.<sup>7</sup>

The Commission should also provide CI eligibility in order to create opportunities for public safety/public service shared systems in the 4.9 GHz band, similar to those in the 800 and 900 MHz bands.<sup>8</sup> These partnerships prove that CI and public safety communications are compatible and can be coordinated with one another.<sup>9</sup> Despite the concerns of APCO and other public safety commenters, allowing CI to use the band would not create an interference problem, because utilities would coordinate their communications with public safety, and in many instances would be partnering with public safety through shared systems.<sup>10</sup> In addition, Congress has encouraged the development of such shared systems, because they improve public safety communications

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<sup>7</sup> Comments of the Office of the Chief Technology Officer, Government of the District of Columbia, at 5 (filed Jul. 8, 2002).

<sup>8</sup> In the Matter of American Electric Power Service Corporation Request for Waiver of Section 90.179 of the Commission's Rules, DA 00-107, *Order*, 15 F.C.C.R. 15,553 (2000); In the Matter of Commonwealth of Pennsylvania and GPU Energy Request for Waiver of Section 90.179 of the Commission's Rules, DA 99-1756, *Order*, 14 FCC Rcd 14029 (1999); Public Utility District No. 1 of Snohomish County, DA 97-2190, *Order*, 13 FCC Rcd 7964 (1997); In the Matter of the State of South Carolina and SCANA Communications, Inc., DA 97-2120, *Order*, 13 FCC Rcd 8787 (1997); and In the Matter of Texas Utilities Services, Inc., DA 97-1404, *Order*, 13 FCC Rcd. 4258 (1997).

<sup>9</sup> *But see* Comments of PSWN at 6; Comments of APCO at 5; Comments of the International Association of Fire Chiefs, Inc. and International Municipal Signal Association at 2; Comments of the National Public Safety Telecommunications Council at 3 (claiming that public safety would compete with CI for spectrum and that CI would create an interference problem for public safety).

<sup>10</sup> Comments of APCO at 4 (filed Jul. 8, 2002); and Comments of PSWN at 6 (filed Jul. 8, 2002).

efficiently and economically – important considerations particularly in the 4.9 GHz band where investment will be necessary to develop equipment in the band.<sup>11</sup>

**III. The Commission should adopt licensing rules that encourage CI use of the 4.9 GHz band.**

UTC agrees with Cinergy and Consumers Energy that the Commission should encourage investment by CI entities by declaring them eligible to become direct licensees in the band.<sup>12</sup> The Commission should not discourage CI entry by making their eligibility conditional upon them obtaining permission from public safety users or by establishing licensing processes that have the same practical effect.

Whereas Public Safety entities propose that the Commission reinstitute the eligibility rules for non-governmental entities (NGOs) in the 700 MHz Public Safety band, UTC submits that the 4.9 GHz band is distinctly different from a legal and technical standpoint. Congress earmarked the 700 MHz band for the narrow class of Public Safety as defined at Section 337(f), and so the Commission permitted licensing of NGO's, including certain CI entities, only upon the written concurrence of a legitimate public safety agency.<sup>13</sup> UTC respectfully disagrees with the Commission's interpretation of Congress's intent towards

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<sup>11</sup> *Congressional Record* at S6325 (June 25, 1997) (colloquy during Balanced Budget Act of 1997 debate by Sen. Bryan and Sen. McCain supporting FCC rules that facilitate, if not promote, public safety/public service shared services).

<sup>12</sup> Comments of Cinergy/Consumers Energy at 27-28.

<sup>13</sup> In the Matter of the Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010, WT Docket No. 96-86, *First Report and Order and Third Notice of Proposed Rulemaking*, 14 FCC Rcd. 152, at ¶ 54 (1998).

eligibility in the 700 MHz proceeding, but it agrees with the Commission's observation in this proceeding that "the 4.9 GHz band is not subject to any statutory restrictions on eligibility to operate on the band."<sup>14</sup> Instead, the Commission can and should declare CI entities eligible to apply directly for licenses in the band, which will encourage investment and lead to the development of the band, reducing costs for *all* "public safety radio service" communications. In addition to eligibility, UTC reiterates that licensing schemes should be adopted that work for both CI and public safety users.<sup>15</sup>

UTC joins the chorus of comments cautioning against commercial licensees in the 4.9 GHz band.<sup>16</sup> UTC is concerned that commercial eligibility would contribute to the same congestion and incompatibility problems that are presently plaguing CI communications, particularly in the PLMR bands below 1 GHz.<sup>17</sup> Moreover, commercial eligibility raises the specter of spectrum auctions, which would unnecessarily complicate the licensing of the 4.9 GHz band and

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<sup>14</sup> *Further Notice of Proposed Rulemaking* at ¶ 32.

<sup>15</sup> See Comments of UTC at 6 (preferring the option of licensing through Regional Planning Committees (RPCs), but suggesting broadening representation on the RPCs to ensure that the communications needs of PSRS are met).

<sup>16</sup> Comments of Cinergy/Consumers Energy at 26; Comments of Public Safety Wireless Network at 6 (filed Jul. 8, 2002); Comments of the City of Phoenix at 2 (filed Jul. 8, 2002), Comments of the Office of the Chief Technology Officer, Government of the District of Columbia at 5 (filed Jul. 8, 2002).

<sup>17</sup> See Comments of UTC at 3. See *also* Marshall W. Ross and Jeng F. Mao, Current and Future Spectrum Use by the Energy, Water, and Railroad Industries, Response to Title II of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2001 Pub. L. 106-553, U.S. Department of Commerce, National Telecommunications and Information Administration 3-3 (Jan. 30, 2002)(hereinafter "NTIA Report")(assessing the impact of interference and congestion on CI communications).

delay CI entry.<sup>18</sup> The Commission cites this proceeding as evidence that it is addressing the communications needs of CI, but UTC sees the 4.9 GHz band filling a very specialized role for short-range communications for PAN/VAN/WAN, emergency hot-spots, and point-to-point backhaul to wide-area networks.<sup>19</sup> Excluding commercial entities from eligibility would be necessary to ensure that CI entities have an even realistic chance of using the 4.9 GHz band for these limited public safety purposes without contending with congestion, interference and spectrum auctions.

In addition to these applications, utilities are also considering the 4.9 GHz band for video surveillance and other applications that could combat terrorism and support homeland security. Evidence exists that critical infrastructure has been targeted by terrorists, which the FCC acknowledged has led to a “shift in thinking” about the importance of wireless networks of CI industries.<sup>20</sup> UTC concurs with comments supporting rules for eligibility and licensing of the 4.9 GHz band that eliminate potential vulnerabilities to critical infrastructure communications systems.<sup>21</sup>

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<sup>18</sup> Comments of UTC at 4; Comments of Cinergy/Consumers Energy at 26.

<sup>19</sup> FCC Staff Report on NTIA’s Study of Current and Future Spectrum Use by the Energy, Water and Railroad Industries, Submitted Pursuant to Public Law No. 106-553, Federal Communications Commission, at 11-12 (Jul. 30, 2002); Comments of Cinergy/Consumers Energy at 7-14 (filed Jul. 8, 2002); and Comments of UTC at 5 (filed Jul 8, 2002).

<sup>20</sup> *Id.* at 5-6, n. 43, *citing* David Johnston and James Risen, *Seized Afghan Files Show Intent, Not Plans*, N.Y. Times, Feb. 1, 2002 at A13.

<sup>21</sup> Comments of Cinergy/Consumers Energy at 14-16.

## **VII. CONCLUSION**

The 4.9 GHz band represents an opportunity for the Commission to demonstrate a shift in thinking concerning the spectrum needs of CI communications, and it represents an opportunity for utilities to lead the development of a new spectrum allocation. UTC urges the Commission to make CI entities eligible in the 4.9 GHz band and to develop licensing rules that encourage CI entities to make the most of the opportunity before them. UTC hopes that the 4.9 GHz allocation will mark the next stage in public service/public safety partnerships, and it looks forward to working with the Commission and the traditional public safety community in the development of this spectrum for the protection of life, health and property by CI and traditional public safety entities.

Respectfully submitted,

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